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JS-6

Attorneys for Plaintiff, Thomas E. Perez,
Secretary, U.S. Department of Labor

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

THOMAS E. PEREZ,
Secretary of Labor,
United States Department of Labor,

Plaintiff,

v.

TYLER RESIDENTIAL CARE, INC.,
a California corporation; BENJAMIN
PENALOSA and OFELIA
PENALOSA, individuals.

Defendants.

) Case No. CV 13-07217 DDP (SSx)

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CONSENT JUDGMENT & ORDER

Plaintiff Thomas E. Perez, Secretary of Labor, United States Department of
Labor (“Plaintiff” or the “Secretary”) having filed his Complaint, and Defendants
Tyler Residential Care, Inc., a California corporation, and Benjamin Penalosa and

CONSENT JUDGMENT

Page 1 of 13

1 Ofelia Penalosa, individuals (collectively “Defendants”), having been duly advised
2 on the proceedings and having agreed to resolve the matters in controversy in this
3 civil action, consent to the entry of this Consent Judgment in accordance herewith:

4 A. The Secretary has filed a Complaint alleging that Defendants violated
5 pro-visions of Sections 6, 7, 11(c), 15(a)(2) and (5) of the Fair Labor Standards Act
6 of 1938, as amended (“FLSA” or the “Act”), 29 U.S.C. §§ 207, 211(c), 215(a)(2)
7 and (5).

8 B. Defendants have appeared, have obtained legal counsel, and
9 acknowledge receipt of a copy of the Secretary’s Complaint.

10 C. Defendants waive issuance and service of process and waive answer
11 and any defenses to the Secretary’s Complaint.

12 D. The Secretary and Defendants waive Findings of Fact and
13 Conclusions of Law, and agree to the entry of this Consent Judgment in settlement
14 of this action, without further contest.

15 E. Defendants admit that the Court has jurisdiction over the parties and
16 subject matter of this civil action and that venue lies in the Central District of
17 California.

18 F. Defendants admit that they failed to pay their employees for all hours
19 worked, in violation of the requirements of the FLSA. Defendants agree to
20 compensate their employees for all hours worked regardless of whether the work
21 was authorized or not. Defendants agree that all hours need to be compensated,
22 including but not limited to time for in-service, interrupted sleep time, travel time,
23 grocery shopping time, no staff coverage time, and additional hours worked for
24 holidays while Defendants’ clients are on the premises.

25 G. Defendants admit that they failed to accurately document hours
worked in violation of the requirements of the FLSA. Defendants agree to
accurately document all hours worked for all of their employees, and to maintain
such records for two years for all nonexempt employees. Defendants agree to keep

1 all earnings records for three years.

2 H. Defendants agree that it is a violation of the FLSA to take deductions
3 from their employees' pay based on an employee's immigration status or
4 nationality. Defendants agree to refrain from making any such illegal deductions.

5 I. Defendants admit that they failed to display in the workplace the
6 Employee Polygraph Protection Act poster and Minimum Wage poster as required
7 by 29 C. F. R. § 801.6 and 29 U.S.C. § 211. Defendants agree to display these
8 posters in conspicuous locations at each of their facilities where employees are
likely to see them.

9 J. Defendants understand and agree that demanding or accepting any of
10 the funds due employees under this Judgment or threatening any employee for
11 accepting money due under this Judgment or for exercising any of their rights
12 under the FLSA is specifically prohibited by this Judgment and may subject the
13 Defendants to equitable and legal damages, including punitive damages and civil
14 contempt.

15 It is therefore, upon motion of the attorneys for the Secretary, and for cause
16 shown,

17 **ORDERED, ADJUDGED, AND DECREED** that pursuant to Section 17
18 of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. §§ 201 et seq.,
19 (hereafter the "Act" or the "FLSA"), that Defendants Tyler Residential Care, Inc.,
20 a California corporation, Benjamin Penalosa and Ofelia Penalosa, their officers,
21 agents, servants, employees, and all persons in active concert or participation with
22 them be, and they hereby are, permanently enjoined and restrained from violating
the provisions of the Act, in any of the following manners:

23 1. Defendants shall not, contrary to Sections 6 and 15(a)(2) of the Act,
24 pay any of their employees who in any workweek are engaged in commerce or in
25 the production of goods for commerce or who are employed in an enterprise

1 engaged in commerce or in the production of goods for commerce, within the
2 meaning of the Act, wages at a rate less than \$7.25 per hour (or at a rate less than
3 such other applicable minimum rate as may hereinafter be established by
4 amendment to the Act).

5 2. Defendants shall not, contrary to Sections 7 and 15(a)(2) of the Act,
6 employ any of their employees who in any workweek are engaged in commerce or
7 the production of goods for commerce, or who are employed in an enterprise
8 engaged in commerce or in the production of goods for commerce, within the
9 meaning of the Act, for workweeks longer than forty hours, unless such employee
10 receives compensation for his or her employment in excess of forty hours at a rate
11 not less than one and one-half times the regular rates at which he or she is
12 employed.

13 3. Defendants shall not fail to make, keep, preserve, make available to
14 authorized agents of the Secretary for inspection, transcription, and/or copying,
15 upon their demand for such access, the records of its employees and of the wages,
16 hours, and other conditions and practices of employment maintained, as prescribed
17 by the regulations issued, and from time to time amended, pursuant to Sections
18 11(c) and 15(a)(5) of the Act and the implementing regulations found in 29 C.F.R.
19 Part 516.

20 4. Defendants shall make, keep, and preserve accurate records of the
21 wages, hours, and other work conditions and practices of each and every individual
22 who performs any work for Defendants at their current or future residential care
23 home facilities. Defendants shall maintain earnings records for three years. For all
24 other records, Defendants shall keep the records for two years for all nonexempt
25 employees.

1 5. Defendants shall not fail to pay their employees for all hours worked,
2 regardless of whether the work was authorized or not. Defendants shall
3 compensate their employees for all hours worked, including but not limited to time
4 for in-service, interrupted sleep time, travel time, grocery shopping time, no staff
5 coverage time, and additional hours worked for holidays while Defendants'
6 consumers are on the premises.

7 6. **IT IS FURTHER ORDERED** that Defendants shall not withhold
8 payment of \$279,577.49 which represents the unpaid minimum wage and overtime
9 compensation hereby found to be due during the period from April 1, 2010 to April
10 1, 2013 ("Subject Period") to those current and former employees of Defendants
11 named in Exhibit A, attached hereto and made a part hereof, in the amounts set
12 forth therein.

13 7. Defendants shall not withhold payment of **\$18,700.00**, which
14 represents unpaid civil money penalties assessed against Defendants and finally
15 determined, pursuant to the authority granted in Section 16(e) of the FLSA, 29
16 U.S.C. § 216(e), for violations of the provisions of the FLSA during the Subject
17 Period.

18 8. Defendants and any individual or entity acting on Defendants' behalf
19 or at their direction, shall not request, solicit, suggest, or coerce, directly, or
20 indirectly, any employee to return or to offer to return to Defendants or to someone
21 else for Defendants, any monies in the form of cash, check, or any other form, for
22 wages previously due or to become due in the future to said employee under the
23 provisions of this Consent Judgment or the FLSA; nor shall Defendants accept, or
24 receive from any employee, either directly or indirectly, any monies in the form of
25 cash, check, or any other form, for wages heretofore or hereafter paid to said

1 employee under the provisions of this Consent Judgment or the FLSA; nor shall
2 Defendants discharge or in any other manner discriminate, solicit or encourage
3 anyone else to discriminate, against any such employee because such employee has
4 received or retained monies due to him or her from Defendants under the
5 provisions of this Consent Judgment or the FLSA.

6 **FURTHER, JUDGMENT IS HEREBY ENTERED**, pursuant to Section
7 16(c) of the FLSA, in favor of the Secretary and against Defendants in the total
8 amount of **\$577,854.98**, which is comprised of unpaid minimum wage and
9 overtime compensation owed by Defendants in the amount of **\$279,577.49**, an
10 additional equal amount as liquidated damages, and unpaid civil money penalties
11 assessed against Defendants.

12 9. Defendants shall pay to the Secretary the gross amount of back wages
13 due, as set forth in greater detail in Paragraph 12, infra, from the total amount of
14 **\$279,577.49**, which represents the unpaid gross minimum wage and overtime
15 compensation hereby found to be due for the Subject Period to the current and
16 former employees of Defendants named in **Exhibit A**, attached hereto and made a
17 part hereof.

18 10. Pursuant to authority expressly provided in Section 16 of the FLSA,
19 29 U.S.C. § 216, Defendants shall further pay to the Secretary as liquidated
20 damages the additional sum of **\$279,577.49** hereby found to be due for the Subject
21 Period to the current and former employees named in **Exhibit A**, attached hereto
22 and made a part hereof.

23 11. Pursuant to the authority granted in Section 16(e) of the FLSA, 29
24 U.S.C. § 216(e), Defendants shall further pay to the Secretary as unpaid civil
25 money penalties assessed against Defendants the additional sum of **\$18,700.00**.

1 12. The provisions of this Consent Judgment shall be deemed satisfied
2 when Defendants comply with the following payment provisions:

3 a. As soon as practicable, and by no later than September 30,
4 2013, Defendants shall deliver to the Wage and Hour Division, United States
5 Department of Labor, Attn: Angelica Garcia, 100 N. Barranca Ave., Suite 850,
6 West Covina, CA 91791, a schedule containing: (1) the names, Social Security
7 numbers, last known home addresses, last known home telephone numbers, last
8 known mobile telephone numbers.

9 b. As soon as practicable, and by no later than September 30,
10 2013, Defendants shall make payment of the back wages and liquidated damages
11 described in Paragraphs 9 and 10, supra, and the unpaid civil money penalties
12 described in Paragraph 11, supra, by delivering a cashier's check or money order.
13 The check shall include the firm name of "Tyler Residential Care Inc." and shall be
14 made payable to the order of the "Wage & Hour Div., Labor." Defendants shall
15 deliver this payment to Wage and Hour Division, United States Department of
16 Labor, Attn: Angelica Garcia, 100 N. Barranca Ave., Suite 850, West Covina, CA
17 91791.

18 13. In the event of a default in the timely making of the payment
19 specified herein, the full gross amount outstanding due under this Consent
20 Judgment, plus post-judgment interest at the rate of 10% per year from the date of
21 this Consent Judgment until the amount of this Consent Judgment is paid in full,
22 shall become immediately due and payable directly to the U.S. Department of
23 Labor by certified check to the Wage and Hour Division ("Wage and Hour"). For
24 the purposes of this paragraph, a "default" is deemed to occur if payment is not
25 delivered within five (5) calendar days of the due date.

1 14. Upon receipt of the payment detailed in Paragraph 12(b), supra, the
2 Secretary shall distribute payments to the persons named in the attached **Exhibit**
3 **A**, or to their estates if that be necessary, in his sole discretion, and any monies not
4 so paid within a period of three (3) years from the date of its receipt, because of an
5 inability to locate the proper persons or because of their refusal to accept it, shall
6 be then deposited in the Treasury of the United States, as miscellaneous receipts,
7 pursuant to 29 U.S.C. § 216(c).

8 15. Defendants, their officers, agents, servants, and employees and those
9 persons in active concert or participation with them, shall not in any way directly
10 or indirectly, demand, require or accept any of the backwages, liquidated damages
11 or the funds in restitution of the retaliation from any of the employees listed on the
12 attached **Exhibit A**. Defendants shall not threaten or imply that adverse action will
13 be taken against any employee because of their receipt of funds due under this
14 Judgment. Violation of this paragraph may subject the defendants to equitable and
15 legal damages, including punitive damages and civil contempt.

16 16. Defendants, their officers, agents, servants, and employees and those
17 persons in active concert or participation with them, shall not in any way retaliate
18 or take any adverse employment action, or threaten or imply that adverse action
19 will be taken against any employee who exercises or asserts his or her rights under
20 the FLSA or provides information to any public agency investigating compliance
21 with the FLSA. Violation of this paragraph may subject the defendants to
22 equitable and legal damages, including punitive damages and civil contempt.

23 17. The filing, pursuit, and/or resolution of this proceeding with the filing
24 of this Consent Judgment shall not act as, or be asserted as, a bar to any action
25 under Section 16(b) of the FLSA, 29 U.S.C. § 216(b), as to any employee not

1 named on the attached Exhibit A, nor as to any employee named on the attached
2 **Exhibit A** for any period not specified herein for the back wage recovery
3 provisions.

4 18. Each party shall bear all fees and other expenses (including court
5 costs) incurred by such party in connection with any stage of this proceeding.

6 19. IT IS FURTHER ORDERED that this Court shall retain jurisdiction
7 of this action for purposes of enforcing compliance with the terms of this Consent
8 Judgment.

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10 IT IS SO ORDERED.

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13 Dated: October 17, 2013

A handwritten signature in cursive script, appearing to read "Don D. Ferguson".

14 U.S. District Judge
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M. PATRICIA SMITH
Solicitor of Labor

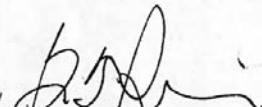
JANET M. HEROLD
Regional Solicitor

DANIEL J. CHASEK
Associate Regional Solicitor

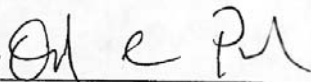
Dated: 9/25-2013

/s/ 
NATALIE NARDECCHIA
Trial Attorney

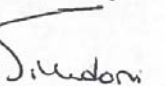
Dated: 9/24-2013

/s/ 
BENJAMIN PENALOSA,
Defendant, as an individual and as
managing agent of Tyler Residential
Care, Inc., a corporation

Dated: 9/24-2013

/s/ 
OFELIA PENALOSA,
Defendant, as an individual and as
managing agent of Tyler Residential
Care, Inc., a corporation

Dated: 9/24-2013

/s/ 
STEPHEN A. MADONI,
Attorney for Tyler Residential
Care, Inc., a corporation

CONSENT JUDGMENT

Page 10 of 13

EXHIBIT A TO CONSENT JUDGMENT

					Total
		BW Start		Total BW	Liquidated
Last Name	First Name	Date	BW End Date	Due (Gross)	Damages
Agraan	Evangeline	03/12/2011	03/09/2013	\$1,154.39	\$1,154.39
Agraan	Marline	08/27/2011	03/23/2013	\$2,365.26	\$2,365.26
Alvarez	Francis	03/05/2011	03/12/2011	\$56.00	\$56.00
Binuya	Dolores	02/11/2012	03/23/2013	\$344.00	\$344.00
Castillo	Arsenia	04/14/2012	03/23/2013	\$782.18	\$782.18
Castillo	Cleofe	02/16/2013	03/23/2013	\$380.58	\$380.58
Chau	Kim	03/12/2011	04/23/2011	\$339.74	\$339.74
Cruz	Jasfer	03/12/2011	05/21/2011	\$52.92	\$52.92
Cruz	Nenita	03/12/2011	03/23/2013	\$24,898.77	\$24,898.77
Cruz	Nijel	03/12/2011	03/09/2013	\$3,211.13	\$3,211.13
De Vera	Lydia	06/16/2012	06/16/2012	\$299.50	\$299.50
Dela Cruz	Eliza	04/23/2011	04/23/2011	\$81.00	\$81.00
Dela Cruz	Narciso	03/12/2011	04/21/2012	\$1,460.53	\$1,460.53
Devenecia	Kimberly	06/11/2011	12/17/2011	\$64.00	\$64.00
Durham	Erica	07/30/2011	07/30/2011	\$312.97	\$312.97
Eguilos	Cesar	03/12/2011	03/23/2013	\$10,944.51	\$10,944.51
Eguilos	Cirilo	04/09/2011	03/09/2013	\$1,066.55	\$1,066.55
Eguilos	Jenia	03/12/2011	03/23/2013	\$12,800.86	\$12,800.86
Eguilos Jr.	Cesar	03/26/2011	12/01/2012	\$1,184.15	\$1,184.15
Estoesta	Joevie	04/09/2011	06/04/2011	\$483.92	\$483.92

1	Estoesta	Romeo	03/19/2011	03/26/2011	\$28.00	\$28.00
2	Framo	Maria Gladys	03/12/2011	05/05/2012	\$9,895.71	\$9,895.71
3	Fuentes	Evalyn	03/12/2011	05/05/2012	\$11,739.36	\$11,739.36
4	Guillermo	Lucita	12/22/2012	03/23/2013	\$337.50	\$337.50
5	Langub	Monalisa	03/12/2011	05/05/2012	\$8,818.71	\$8,818.71
6	Langub	Stephen	04/09/2011	05/05/2012	\$7,880.43	\$7,880.43
7	Legaspi	Virgilio	08/27/2011	03/10/2012	\$600.21	\$600.21
8	Lulu	Lourdes	06/11/2011	05/05/2012	\$7,021.50	\$7,021.50
9	Manabat	Enrique	03/12/2011	03/23/2013	\$5,146.22	\$5,146.22
10	Manabat	Rosario	03/12/2011	03/23/2013	\$19,923.30	\$19,923.30
11	Manabat Jr.	Enrique	03/12/2011	03/23/2013	\$20,517.60	\$20,517.60
12	Marcellana	Ligaya	03/26/2011	09/10/2011	\$265.45	\$265.45
13	Martillano	Dolores	03/12/2011	03/23/2013	\$224.19	\$224.19
14	Morales	Gigi	08/06/2011	04/21/2012	\$2,140.66	\$2,140.66
15	Morla	Rosalindalinda	03/12/2011	03/23/2013	\$17,394.62	\$17,394.62
16	Onierro	Mell	03/12/2011	02/09/2013	\$27,032.52	\$27,032.52
17	Ordillano	Flordeliza	04/09/2011	02/09/2013	\$19,711.03	\$19,711.03
18	Paras	Helen	03/09/2013	03/23/2013	\$274.36	\$274.36
19	Pescador	Maximina	11/19/2011	03/09/2013	\$3,159.21	\$3,159.21
20	Rodriguez	Juana	06/04/2011	03/23/2013	\$624.35	\$624.35
21	Sarmiento	Zenaida	05/19/2012	05/19/2012	\$55.25	\$55.25
22	Soriano	Anita	03/12/2011	02/11/2012	\$1,708.73	\$1,708.73
23	Tamundong	Angelita	10/29/2011	12/03/2011	\$108.00	\$108.00
24	Valmeo	Catalina	03/12/2011	03/23/2013	\$15,725.04	\$15,725.04
25	Valmeo	Clifford	03/12/2011	04/21/2012	\$16,232.70	\$16,232.70

1	Valmeo	Irene	03/12/2011	01/26/2013	\$2,551.90	\$2,551.90
2	Valmeo	Marianne	03/12/2011	01/12/2013	\$1,037.46	\$1,037.46
3	Valmeo	Teofilo	03/12/2011	03/23/2013	\$15,756.89	\$15,756.89
4	Villadores	Florencia	07/23/2011	03/23/2013	\$1,383.63	\$1,383.63
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